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10 Attorneys for Defendant  
11 CITY OF PULLMAN  
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UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF WASHINGTON

THE LANDS COUNCIL, a non-  
profit corporation.

Plaintiff,

vs.

CITY OF PULLMAN, a municipal  
corporation,

Defendant.

Case No. CV-12-0053-JLQ

  
[Proposed] AMENDMENT TO  
CONSENT DECREE

1 Plaintiff, The Lands Council, and Defendant, the City of Pullman (the  
2 “City”), subject to approval by the Court, hereby agree to the terms and conditions  
3 of this Amendment to Consent Decree. The Lands Council and the City are  
4 referred to collectively as the “Parties,” or individually as a “Party,” to this Consent  
5 Decree.

6 **RECITALS**

7 1. The Lands Council is a Washington nonprofit organization formed and  
8 operated for the purpose of preserving and revitalizing Inland Northwest forests,  
9 water, and wildlife through advocacy, education, effective action, and community  
10 engagement. The Lands Council identifies environmental and health issues along  
11 the South Fork of the Palouse River and reaches out to river users who share its  
12 commitment to a river that is swimmable, fishable, and properly regulated;

13 2. The City operates a Wastewater Treatment Plant (“WWTP”) that  
14 collects, transports, and treats sewage for the City, covered by National Pollution  
15 Discharge Elimination System (NPDES) Permit No. WA-004465-2 (“Wastewater  
16 Permit”), and a Municipal Separate Storm Sewer System (“MS4”) that covers the  
17 entire incorporated area of the City and is regulated by the Eastern Washington  
18 Phase II Municipal Storm Water Permit (“Phase II Permit”);

19 3. The Parties signed into a Consent Decree to resolve a dispute  
20 regarding the MS4 and WWTP and the City’s compliance with the Federal Water  
21 Pollution Control Act (“Clean Water Act” or “CWA”), 33 U.S.C. § 1342, and the  
22 Court approved the Consent Decree on May 3, 2012 (the “Consent Decree”);

23 4. The Parties have been working cooperatively and diligently to  
24 implement the Consent Decree and have concluded that the Consent Decree should  
25 be amended so that the common goals of the Parties can be achieved in a timely  
26 manner;  
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1           5. The Parties agree, with no admission of liability or the validity of any  
2 claim, allegation or defense, and subject to approval by the Court, to the following  
3 terms and conditions set forth in this Amendment to Consent Decree.

4           NOW THEREFORE, it is hereby stipulated and agreed between the Parties,  
5 and ordered and decreed by the Court, as follows:

#### 6                           **I. GENERAL OBJECTIVES**

7           1. The objectives of this Amendment to Consent Decree are:

- 8                   a. To ensure that the City complies with the Clean Water Act;
- 9                   b. To ensure that the City continues to use, implement, and  
10 improve ways, means, and methods to minimize pollution discharges from the MS4  
11 and WWTP systems into the South Fork of the Palouse River; and
- 12                   c. To further the goals and objectives of the Clean Water Act

#### 13                           **II. DEFINITIONS**

14           Unless otherwise expressly defined herein, terms used in this Amendment to  
15 Consent Decree, which are defined in the CWA or in regulations, or rules  
16 promulgated under the CWA, have the meaning assigned to them in the applicable  
17 statutes, regulations, or rules.

#### 18                           **III. JURISDICTION AND VENUE**

19           For the purposes of entry and enforcement of this Amendment to Consent  
20 Decree, the Parties stipulate that the United States District Court for the Eastern  
21 District of Washington has jurisdiction over the Parties and subject matter of this  
22 action. The Parties further stipulate that venue is appropriate in the United States  
23 District Court for the Eastern District of Washington. Solely for the purposes of  
24 entry and enforcement of this Amendment to Consent Decree, the City agrees that it  
25 shall not challenge The Lands Council's standing to bring this action and/or to  
26 enforce the terms of this Amendment to Consent Decree.  
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#### 1                    **IV. EFFECT OF AMENDMENT TO CONSENT DECREE**

2            The Lands Council does not, by its consent to this Amendment to Consent  
3 Decree, warrant or aver in any manner that the City's compliance with this  
4 Amendment to Consent Decree will constitute or result in compliance with any  
5 Federal, State, or local law or regulation. Nothing in this Amendment to Consent  
6 Decree shall be construed to affect or limit in any way the obligation of the City to  
7 comply with all Federal, State and local laws, and regulations governing any  
8 activity required by this Amendment to Consent Decree.

9            Neither this Amendment to Consent Decree, nor any payment pursuant to the  
10 Amendment to Consent Decree, shall constitute evidence or be construed as a  
11 finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it  
12 be construed as an admission or violation of any law, rule, regulation, permit, or  
13 administrative order by the City. However, this Amendment to Consent Decree  
14 and/or any payment pursuant to the Amendment to Consent Decree may constitute  
15 evidence in actions seeking to enforce compliance with this Amendment to Consent  
16 Decree. The City maintains and reserves all defenses it may have to any alleged  
17 violations that may be raised in the future.

#### 18                    **V. AMENDMENTS**

19            **A. Section VI** of the Consent Decree is amended to read:

20            "The term 'Effective Date,' as used in this Consent Decree, shall  
21 mean the date the Court orders entry of the consent decree. The  
22 term 'Termination Date' as used in this Consent Decree shall mean  
23 the date of termination of the Consent Decree, which shall be  
24 September 30, 2019, so long as all payments, fees, and costs due  
25 under or pursuant to this Consent Decree, including, but not limited  
26 to, provisions governing Supplemental Environmental Projects,  
27 Attorney's Fees and Costs, and Dispute Resolution, have been paid  
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1 in full.”

2 **B. Section XIII.3.** of the Consent Decree is amended to read:

3 “As provided above, this Consent Decree shall continue in effect  
4 until September 30, 2019.”

5 **C. Section VII.C.1.** of the Consent Decree is amended to read:

6 “To address issues with the WWTP’s disinfection system, the City  
7 shall proceed with upgrades to the current system to reduce  
8 formation of dichlorobromomethane (DCBM). No later than  
9 September 1, 2019, the City shall verify that construction is  
10 substantially complete.”

11 **D.** All other provisions of the Consent Decree remain in full force and  
12 effect.

### 13 **VI. MISCELLANEOUS PROVISIONS**

14 1. Court Approval: This Amendment to Consent Decree is subject to  
15 notice, review and comment by the United States Department of Justice and the  
16 Environmental Protection Agency, and approval by the Court, as provided by the  
17 Clean Water Act.

18 2. Effective Date: The Effective Date of this Amendment to Consent  
19 Decree shall be the date of approval and entry by the Court.

20 3. Execution in Counterparts: This Amendment to Consent Decree may  
21 be executed in one or more counterparts which, taken together, shall be deemed to  
22 constitute one and the same document.

23 5. Severability: In the event that any of the provisions of this  
24 Amendment to Consent Decree are held by a court to be unenforceable, the validity  
25 of the enforceable provisions shall not be adversely affected, but the Parties shall  
26 use the Dispute Resolution procedures (including access to Court, if necessary) to  
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1 develop a functionally equivalent provision to substitute for the unenforceable  
2 provision.

3 6. Construction: The language in all parts of this Amendment to Consent  
4 Decree, unless otherwise stated, shall be construed according to its plain and  
5 ordinary meaning.

6 7. Authority to Sign: The undersigned are authorized to execute this  
7 Amendment to Consent Decree on behalf of their respective Parties and have read,  
8 understood and agreed to all of the terms and conditions of this Amendment to  
9 Consent Decree.

10 8. Court Approval: If for any reason the Court should decline to approve  
11 this Amendment to Consent Decree in the form presented, the Parties shall use their  
12 best efforts to work together to modify the Amendment to Consent Decree within  
13 thirty (30) days so that it is acceptable to the Court. If the Parties are unable to  
14 modify this Amendment to Consent Decree in a mutually acceptable manner within  
15 thirty (30) days, this Amendment to Consent Decree is voidable at the sole  
16 discretion of any Party and the terms of this Amendment to Consent Decree may  
17 not be used as evidence in any litigation between the Parties.

18 The Parties hereto enter into this Amendment to Consent Decree and submit  
19 it to the Court for approval and entry as a final judgment.  
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2 APPROVED AS TO CONTENT AND FORM:  
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4 THE LANDS COUNCIL  
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7 By: Mike Petersen  
8 Mike Petersen, The Lands Council  
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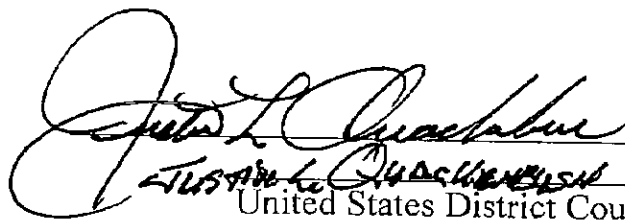
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11 CITY OF PULLMAN  
12 By: Glenn A. Johnson  
13 Glenn A. Johnson, Mayor  
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15 Attest: Leann L. Hubbard  
16 Leann L. Hubbard, Finance  
17 Director  
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21 DATED March 30, 2016  
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3 IT IS HEREBY ORDERED that this Amendment to Consent Decree is approved  
4 and entered accordingly, subject to the ongoing jurisdiction of the Court, for the  
5 purposes of enforcement of this Amendment to Consent Decree.  
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7 APPROVED AND SO  
8 ORDERED:  
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11  Judge  
United States District Court  
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13 Dated: April 25, 2016  
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